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April 19, 2004 via email to comments@FDIC.gov

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Re: **SARC/AAC Guidelines**: FDIC Proposed Changes to the Guidelines for Appeals of Material Supervisory Determinations; 69 Federal Register 12855; March 18, 2004

Dear Mr. Feldman:

The Federal Deposit Insurance Corporation (FDIC) proposes to make changes to the appeals process for material supervisory determinations and to provide for appeals of deposit insurance determinations. Part of the proposal would essentially strip the FDIC's Ombudsman from <u>any</u> participation in an appeal of a material supervisory determination. The American Bankers Association (ABA) strongly objects to the FDIC's proposal. ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership - which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks - makes ABA the largest banking trade association in the country.

The FDIC proposes to reduce the membership of the Supervision Appeals Review Committee (SARC) from five members to three, with the result that the FDIC's Ombudsman would no longer have a vote on nor be allowed to participate in supervisory matters before the SARC. The FDIC writes that this is to "facilitate the disposition of SARC appeals and further underscore the perception of the SARC as a fair and independent high-level body for review of material supervisory determinations within the FDIC." While ABA agrees that the change in all likelihood will "facilitate the disposition of appeals," ABA believes it highly unlikely that it will "underscore the perception of the SARC as a fair and independent high-level body" for review of appeals. We believe the removal of the ombudsman from the SARC in fact will diminish its credibility in bankers' eyes as an appropriate appeals review body.

ABA strongly supported the provisions of Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Act) that require each Agency to have a formal appeals process for supervisory determinations. ABA also strongly supported the other provision in Section 309 of that Act that requires that each Agency create and maintain an Ombudsman to assist bankers in dealing with the Agency when supervisory issues arise. The duties of the Ombudsman, as set out in the Act, are to:

"(A) act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and

(B) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality."

At the time that the Agencies implemented this law by creating an appeals process, ABA applauded the Office of the Comptroller of the Currency's (OCC) willingness to grant real supervisory review authority to its Ombudsman and was less supportive of the FDIC's approach, which gave the Ombudsman only one vote out of five on the FDIC's SARC. ABA believed then and continues to believe now that the OCC's approach is to be preferred and that it also more closely meets the requirements of the law.

Now the FDIC proposes to reduce even further the authority of its Ombudsman by removing the Ombudsman from the review committee, which has the additional effect of removing the Ombudsman entirely from the process. As the FDIC writes in its proposal, "under the proposed guidelines, the subject matter of a material supervisory determination that has been appealed to the SARC or that has been resolved in a final SARC decision is similarly ineligible for consideration by the Ombudsman."

ABA opposes the FDIC's proposal. ABA believes that, at a minimum, the Ombudsman must continue as part of the SARC, if the FDIC will not grant to the Ombudsman the authority to actually decide appeals. ABA believes that the FDIC's proposal does not conform with the statutory requirement for the Ombudsman and will <u>definitely not</u> "underscore the perception of the SARC as a fair and independent high-level body" for review of appeals, at least with bankers. ABA urges the FDIC not to adopt this part of the proposal.

Sincerely,

Paul Alan Smith

Paul Smith
Senior Counsel